

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, SPIRIT FACTOR LLC d/b/a FUEL ATHLETICS, and STARS AND STRIPES GYMNASTICS ACADEMY INC. d/b/a STARS AND STRIPES KIDS ACTIVITY CENTER, on behalf of themselves and all others similarly situated

Plaintiffs,

v.

VARSITY BRANDS, LLC, VARSITY SPIRIT, LLC, VARSITY SPIRIT FASHION & SUPPLIES, LLC, and U.S. ALL STAR FEDERATION, INC.,

Defendants.

**Civ. Action No. 2:20-cv-02600-SHL-  
cgc**

---

**DECLARATION OF NICOLE D. BERKOWITZ**

---

I, NICOLE D. BERKOWITZ, pursuant to Title 28 U.S.C. Section 1746, hereby declare as follows:

1. My name is Nicole D. Berkowitz. I am over twenty-one (21) years of age, of sound mind, and competent to make this declaration. I make the following statements based on my own personal knowledge of the facts stated herein.

2. As counsel for U.S. All Star Federation, Inc. ("USASF"), I have assisted in USASF's collection and searching of electronically stored information ("ESI").

3. Since Plaintiffs first sought to confer regarding USASF's responses to Plaintiffs' requests for production, the parties have conducted at least 19 separate conference calls spanning approximately 30 hours, not including preparation, follow-up, and written correspondence regarding these issues. This is separate and apart from the numerous hours that Varsity has also spent meeting and conferring with Plaintiffs regarding their own responses to Plaintiffs' requests

for production.

4. In the April 2, 2021 letter from Vicky Sims (counsel for Plaintiffs) to undersigned counsel, Plaintiffs suggested deferring discussion on Request Nos. 98-111.

5. This proposal was discussed further during the Parties' meet-and-confer calls later in April 2021, and it was undersigned counsel's understanding that the Parties' had reached an agreement in principal on this issue.

6. Just before the May 5, 2021 deadline for raising discovery disputes to the Court, Plaintiffs indicated that they desired a broader stipulation, which would not only defer discussion on these fourteen requests, but which would also permitting Plaintiffs to "[move] to compel one or both Defendants to produce additional documents and data, employ additional search terms, review additional custodial files, and/or produce other forms of discovery related to potential disputes about requests that are not currently ripe for resolution, that are presently unknown to Plaintiffs, or should the documents and data that are produced by Defendants prove insufficiently responsive to the Varsity and USASF RFPs." Plaintiffs refused to identify what additional issues (other than Plaintiffs' RFPs 98 to 111) would be subject to this proposed stipulation, which essentially would have eviscerated the Court's scheduling order.

Further Declarant Sayeth Not.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 19, 2021.

  
\_\_\_\_\_  
Nicole D. Berkowitz